

## Message Text

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EO 11652: NA  
TAGS: PGOV, PINS, SHUM, CI  
SUBJ: SUPREME COURT RULES AGAINST GOC ON LOSS OF NATIONALITY  
CASE

REF: SANTIAGO 3835 (NOTAL)

1. SUMMARY: IN A BENCHMARK DECISION DECEMBER 19 THE CHILEAN SUPREME COURT SET ASIDE A GOC DECREE STRIPPING AN EXILE LABOR LEADER OF HIS NATIONALITY. BY AN OVERWHELMING 10-2 DECISION THE COURT SAID THAT THE GOC HAD NOT PROVEN ITS ASSERTION THAT THE MAN'S ACTIVITIES ABROAD HAD SERIOUSLY JEOPARDIZED THE STATE. IN ADDITION TO OPENING THE DOORS FOR SIMILAR ACTIONS IN DEPRIVATION OF NATIONALITY CASES (AT LEAST ONE OTHER HAS ALREADY BEEN FILED), THE RULING PUT THE GOC ON NOTICE FOR THE FIRST TIME IN A SECURITY-RELATED CASE THAT THE EXECUTIVE MUST BE PREPARED TO BACK ITS CLAIMS WITH PROOF. END SUMMARY.

2. BACKGROUND: IN MAY, 1977, PRESIDENT PINOCHET AND HIS CABINET SIGNED A SUPREME DECREE STRIPPING THREE EXILED LABOR LEADERS

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OF THEIR CHILEAN CITIZENSHIP BECAUSE OF THEIR EFFORTS TO DISCREDIT CHILE ABROAD (REFTEL). VARIOUS DECREE LAWS PERMIT THE GOC TO TAKE THIS STEP DURING PERIODS OF EMERGENCY RULE WHEN THE MINISTRY OF FOREIGN AFFAIRS, DRAWING UPON REPORTS FROM CHILEAN DIPLOMATIC OR CONSULAR POSTS OR "OTHER TRUSTWORTHY SOURCES," SO RECOMMENDS AND DECLARES THAT THE ACTIONS CONSTITUTED A "GRAVE THREAT" TO THE "ESSENTIAL INTEREST OF THE

STATE". ONE OF THE TRIO, HUMBERTO ELGUETA GUERIN (REPRESENTED BY A LAWYER IN CHILE) BROUGHT A HABEAS CORPUS ACTION BEFORE THE SUPREME COURT, SITTING AS A JURY RATHER THAN AS AN APPELLATE COURT, I.E., TO CONSIDER BOTH FACTS AND LAW.

3. MAJORITY DECISION: TEN JUSTICES AGREED THAT THE FOREIGN MINISTRY HAD PROVIDED NO CERTIFIED EVIDENCE TO SUPPORT THE GOC'S ASSERTION. FURTHERMORE, THE INFORMATION PROVIDED BY THE MINISTRY OF INTERIOR, WHICH HAD BEEN OBTAINED BY THE NOW DEFUNCT NATIONAL INTELLIGENCE DIRECTORATE (DINA), CONTAINED ONLY A NARRATIVE, UNSUPPORTED BY EVIDENCE. ACCORDINGLY THE GOC'S DECREE AGAINST ELGUETA WAS WITHOUT LEGAL EFFECT.

4. CONCURRING OPINIONS: FOUR JUDGES MADE THE POINT THAT ONLY DID THE MINISTRY OF INTERIOR FAIL TO PRESENT A DOCUMENTED CASE, IT ALSO REFUSED TO PROVIDE THE SUBSTANTIATING DOCUMENTATION AT THE DIRECT REQUEST OF THE COURT. THESE FOUR SAID THAT THE MINISTER'S REFUSAL WAS "UNACCEPTABLE" AND "WITHOUT ANY LEGAL BASIS" THREE OTHER JUDGES MADE THE POINT THAT EVEN IF THE FOREIGN MINISTRY DID NOT PREPARE THE INITIAL BRIEF CORRECTLY THEY (THE JUDGES) WOULD HAVE REVIEWED THE ALLEGED PUBLIC DOCUMENTS ELGUETA WAS SUPPOSED TO HAVE SIGNED -- BUT THE GOC NEVER SHOWED THEM TO THE COURT.

5. DISSENTING OPINION: TWO JURISTS ARGUED THAT FORMAL RULES OF EVIDENCE DID NOT OBTAIN IN SUCH "JURY-TYPE" PROCEEDINGS. LIMITED OFFICIAL USE

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BASED UPON THE VARIOUS CLAIMS MADE BY THE GOC AND THEIR OWN INDEPENDENT KNOWLEDGE OF EVENTS, THEY THOUGHT THE GOC'S DECISION SHOULD STAND.

6. IMMEDIATE FALLOUT: THE SAME DAY THE GOC ISSUED A NEW DECREE REINSTATING ELGUETA'S CITIZENSHIP. DECEMBER 20, LAWYERS FOR EX-AIR FORCE GENERAL SERGIO POBLETE (SANTIAGO 7964) FILED A SIMILAR APPEAL. ACCORDING TO OUR RECORDS SIX MORE FALL INTO THE SAME CATEGORY -- INCLUDING THE TWO OTHER LABOR LEADERS. A SEVENTH, ORLANDO LETELIER, IS DEAD.

7. COMMENT: AT THIS POINT WE DO NOT KNOW WHAT APPLICABILITY THIS DECISION WILL HAVE IN THE BROAD RANGE OF CASES WHERE IT MIGHT SEM TO RELATE. A QUICK CHECK WITH CHRISTIAN DEMOCRATIC LAWYERS INVOLVED IN HUMAN RIGHTS CASES FOUND THEM CLOSE TO ECSTATIC. A VICARIATE LAWYER, HOWEVER, WAS MORE RESTRAINED.

8. MANY GOC EXECUTIVE ACTIONS IN THE INTERNAL SECURITY FILED ARE IMPLEMENTED BY DECREES (EXPULSIONS, BANISHMENT, PREVENTIVE DETENTION, REFUSAL TO ADMIT PEOPLE AT

FRONTIERS, ETC.). TYPICALLY THE CIVILIAN COURTS HAVE NOT DEMANDED THAT THE GOC PROVED THAT SUCH MEASURES WERE SUPPORTED BY EVIDENCE, I.E. WERE "WELL FOUNDED" (FUNDADO) IN LEGAL PARLANCE. THE OVERWHELMING DECISION IN THE ELGUETA CASE IS REMARKABLE IN THIS REGARD. LAWYERS FOR EXPELLED PDC IDEOLOGUE JAMIE CASTILLO AND THE THREE WOMEN REFUSED RE-ENTRY INTO CHILE HAVE TAKEN NEW HOPE. BUT THE VICARIATE THINKS THE SEVERITY AND PERMANENCE OF THE SANCTIONS IN DEPRIVATION OF NATIONALITY CASES MAKE THEM UNIQUE.

9. EQUALLY STRIKING ARE THE CAUSTIC REFERENCES TO THE MINISTRY OF INTERIOR IN THE MAJORITY DECISION AND MUCH MORE FORCFULLY PRESENTED IN A CONCURRING OPINION. WE RECALL NO PREVIOUS CASE WHERE SUCH TOUGH LANGUAGE APPEARS. LIMITED OFFICIAL USE

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